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5 Attorneys for Defendants
TERRA VAC CORPORATION and
6 TERRA-VAC, INC. dba TERRA-VAC, P.R.
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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 JACOB CALANNO,)
12 Plaintiff,) CASE NO. 07cv2052-BTM (POR)
13 v.)
14) DEFENDANTS TERRA VAC
15 TERRA VAC CORPORATION, a) CORPORATION AND TERR-VAC, INC.
16 California corporation; TERRA-) dba TERRA-VAC, P.R.'S ANSWER
17 VAC, INC., a corporation, dba) TO PLAINTIFF'S COMPLAINT
18 TERRA-VAC, P.R.; and DOES 1) Complaint Filed: 10/29/07
through 100, inclusive)
19 Defendants.)
20)
21)
22)
23)
24)
25)
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27)
28)

Defendants TERRA VAC CORPORATION, TERRA-VAC, INC., and TERRA-VAC, P.R. ("Defendants") answer the Plaintiff's Complaint and submit their defenses and counter-claims as follows:

GENERAL DENIAL AND ANSWER

Defendants deny each and every allegation contained in Plaintiff's Complaint ("Complaint") except as hereinafter may be expressly admitted.

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1 1. The allegations contained in paragraph 1 of the Complaint
2 consist of Plaintiff's identification of his state and county of
3 residence to which no response from Defendants is required.

4 2. Responding to Paragraph 2 of the Complaint, Defendants
5 admit that TERRA-VAC Corporation is a corporation organized in the
6 state of California but denies that TERRA-VAC CORPORATION's charter
7 has been forfeited.

8 3. Responding to Paragraph 3 of the Complaint, Defendants
9 admit that TERRA-VAC, INC. is a corporation organized in an
10 unincorporated territory of the United States but lacks sufficient
11 knowledge or information to form a belief as to the truth of
12 allegation that TERRA VAC CORPORATION and TERRA-VAC, INC. "operate
13 as one entity, sharing personnel and financial functions such that
14 each is the alter ego of the other" and therefore deny the same.

15 4. Defendants admit to the allegations of Paragraph 4.

16 5. Responding to Paragraph 5 of the Complaint, Defendants
17 admit retention of direction of Plaintiff in his employment but deny
18 controlling all of the material aspects of Plaintiff's employment.

19 6. The allegations of paragraph 6 are legal conclusions to
20 which no response is required.

21 7. The allegations of paragraph 7 are legal conclusions to
22 which no response is required.

23 8. Defendants lack sufficient knowledge or information to
24 form a belief as to the truth of the information contained in
25 paragraph 8, and therefore deny the same.

26 9. Defendants lack sufficient knowledge or information to
27 form a belief as to the truth of the information contained in
28 paragraph 9, and therefore deny the same.

1 10. Defendants lack sufficient knowledge or information to
2 form a belief as to the truth of the information contained in
3 paragraph 10, and therefore deny the same.

4 11. Defendants lack sufficient knowledge or information to
5 form a belief as to the truth of the information contained in
6 paragraph 10 as to what the Defendants "predecessors" performed but
7 Defendants admit the allegations as they pertain to Defendants
8 alone.

9 12. Defendants admit the allegations contained in Paragraph
10 12.

11 13. Responding to Paragraph 13 of the Complaint, Defendants
12 admit that James Keegan directed Plaintiff to raise the slurp tube
13 but deny that the rest of the paragraph.

14 14. Defendants admit the allegations contained in Paragraph
15 14.

16 15. Defendants deny the allegations contained in Paragraph
17 15.

18 16. Defendants deny the first sentence of Paragraph 16.
19 Defendants admit that Plaintiff reported an alleged "spike" to James
20 Keegan but deny that this "spike" was dismissed by James Keegan.
21 Defendants lack sufficient knowledge or information to form a belief
22 as to the truth of the last two sentences of Paragraph 16, and
23 therefore deny the same.

24 17. Defendants lack sufficient knowledge or information to
25 form a belief as to the truth of the information contained in
26 Paragraph 17, and therefore deny the same.

27 18. Responding to Paragraph 18 of the Complaint, Defendants
28 admit that on October 26, 2005, Keegan informed Plaintiff that he

1 was being terminated and that Plaintiff's last day of work was
2 October 28, 2005, but deny all other allegations.

3 19. Defendants deny the allegations contained in Paragraph 19
4 of the Complaint.

5 20. Paragraph 20 simply incorporates the preceding paragraphs
6 and no response is required.

7 21. Defendants deny the allegations contained in Paragraphs
8 21-22 of the Complaint.

9 22. In response to Paragraph 23, Defendants admit discharging
10 Plaintiff but deny all other allegations.

11 23. Defendants lack sufficient knowledge or information to
12 form a belief as to the truth of the information contained in
13 paragraphs 24-25, and therefore deny the same.

14 24. Paragraph 26 simply incorporates the preceding paragraphs
15 and no response is required.

16 25. Defendants deny the allegations contained in Paragraphs
17 27-28 of the Complaint.

18 26. The allegations of paragraph 29 are legal conclusions to
19 which no response is required.

20 27. Paragraph 30 simply incorporates the preceding paragraphs
21 and no response is required.

22 28. Defendants deny the allegations contained in Paragraph 31
23 of the Complaint.

24 29. The allegations of paragraph 32 are legal conclusions to
25 which no response is required.

26 30. Defendants deny the allegations contained in Paragraphs
27 33-36 of the Complaint.

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AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which
2 relief can be granted.

2. Plaintiff's Complaint in its entirety and each of its
3 causes of action is barred by any and all applicable statute of
4 limitations.

3. To the extent that any damages sought in the Complaint
4 arise from the sole negligence or willful misconduct of Plaintiff,
5 recovery is precluded.

6. Plaintiff is not entitled to recover damages in any sum,
7 or sums, or at all, as Plaintiff has failed and refused to mitigate
8 his damages, if any, at all times relevant herein.

9. The Complaint fails to state the facts sufficient to
10 constitute a basis for an award of attorney's fees against
11 Defendants.

12. The conduct of Defendants complained of in the Complaint
13 was privileged and justified in that Defendants, in doing the things
14 alleged in the Complaint, were asserting legal rights to engage in
15 the conduct alleged, with a good faith belief in the existence of
16 that right.

17. The Complaint and each of its cause of action are barred
18 because, at all relevant times, Plaintiff was an at-will employee
19 subject to termination, with or without cause, and with or without
20 notice.

21. The Complaint and each of its causes of action are barred
22 because all acts of defendant affecting the terms and/or conditions
23 of plaintiff's employment were privileged and done with good cause.
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1 9. The Complaint and each of its causes of action are barred
2 either in whole or in part by the doctrine of after-acquired
3 evidence.

4 10. Plaintiff's claims, and any relief sought thereby, are
5 barred because Plaintiff failed to exhaust the available
6 administrative remedies under established internal grievance
7 procedure.

8 11. The claims of Plaintiff, and any relief sought thereby,
9 are barred, as Plaintiff has unclean hands in and about the matters
10 alleged.

11 12. Defendants' alleged acts were not the proximate cause of
12 any damages allegedly suffered by Plaintiff, and Plaintiff's damages
13 are instead attributable to the acts of others, including
14 Plaintiff's own acts.

15 13. All actions taken by Defendants were taken in good faith
16 and for legitimate business reasons.

17 14. Defendants allege they acted reasonably and in good faith
18 with regard to the acts and transactions that are the subject of the
19 complaint.

20 15. Plaintiff's claims, and any relief sought thereby, are
21 barred as any alleged conduct of which Plaintiff complains was
22 privileged and justified.

23 16. Defendants allege that any acts alleged to have been
24 committed by them were committed in the exercise of legitimate and
25 lawful business purposes.

26 17. Defendants allege that any acts alleged to have been
27 committed by them outweigh whatever harm or impact such acts may
28 have on the Plaintiff.

1 18. Defendants allege that Plaintiff's causes of action are
2 barred, in whole or in part, by the doctrine of laches.

3 19. Defendants allege that Plaintiff's alleged damages were
4 caused and are caused in whole or in part by the negligence,
5 conduct, acts, breaches, omissions, and activities of Plaintiff
6 and/or Plaintiff's agents, or by the acts of other persons,
7 corporations and/or entities, which acts were the intervening and
8 /or superseding cause of the alleged damages, thus barring or
9 reducing Plaintiff's recovery against Defendants.

10 20. Defendants allege that the Complaint fails to state a
11 claim upon which an award of punitive and exemplary damages can be
12 granted.

13 21. Any award of punitive damages as sought by plaintiff
14 would violate the due process and excessive fine clauses of the
15 Fifth, Eighth and Fourteen Amendments of the United States
16 Constitution, as well as the Constitution of the State of
17 California.

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1 WHEREFORE, having fully answered Plaintiff's Complaint,
2 Defendants pray judgment as follows:

- 3 1. That Plaintiff take nothing by way of the Complaint.
4 2. For costs of suit incurred herein, including attorney's
5 fees.
6 3. For such other and further relief as the Court deems just
7 and proper.

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9 Dated: May 2nd, 2008

MAXIE RHEINHEIMER STEPHENS &
VREVICH, LLP

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11 By: _____
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Barry M. Vrevich
Jillian M. Fairchild
Attorneys for Defendant,
TERRA VAC CORPORATION and
TERRA-VAC, INC. dba TERRA-VAC,
P.R.

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